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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 03 049 52295 Office: CALIFORNIA SERVICE CENTER Date: DEC 30 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioners are heads of a household (collectively, the petitioner). It seeks to employ the beneficiary permanently in the United States as a housekeeper. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Eligibility in this matter turns on whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the Form ETA 750 as of the petition's priority date. A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 204.5(d). *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this instance, it is February 4, 2000.

The Form ETA 750 indicated that the position of housekeeper required three (3) months of experience in the job offered. Initially, the director deemed the petitioner's evidence to be inconsistent with the petitioner's job offer for the full-time employment of the beneficiary. [1] In a request for evidence, dated May 14, 2003 (RFE), the director specified four (4) discrepancies that undermined the genuineness of the job offer and requested the petitioner's explanation. [2]

In response to the RFE, the petitioner dealt with inconsistencies, as specified by the director. Upon consideration of the response to the RFE, the director issued a Notice of Intent to Deny, dated October 9, 2003 (NOID).

The NOID challenged the evidence of the beneficiary's overseas experience of three (3) months with two (2) employers before the priority date. It relied on the report of an investigator's interview, dated August 22, 2003 (2003 investigation), with the wife of [redacted]

[redacted] stated to the investigator that the beneficiary was a neighbor who did odd jobs around Mrs. Contreras's house for only six (6) months, not from 1988 to 1994. To the contrary, [redacted] in a letter dated July 31, 2002, [redacted], had written that the beneficiary "worked in our home" from March 1988 to February 1994. [redacted] denied any knowledge of how much the beneficiary was paid. Further, Mrs. [redacted] clarified to the investigator that her husband and she intended to give the beneficiary a letter of recommendation, not a verification of employment.

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[1] Employment is defined as permanent, full time work. 20 C.F.R. § 656.3, *Employment*. Evidence must relate to such qualifying experience. *See* 8 C.F.R. § 204.5(g)(1).

[2] The RFE questioned, also, the petitioner's ability to pay the proffered wage. The petitioner augmented the evidence with schedules and statements (the complete tax return) for its 2000 Form 1040 and added its complete 2001 Form 1040. This issue did not figure further in the proceedings.

In response to the NOID, the petitioner resubmitted the [redacted]. An undated letter from [redacted] mmendation) clarified, again, that her letter and that of "my husband" were letters of recommendation. [4] She stipulated that she did not know how much the beneficiary was paid. [5] Counsel's transmittal of the response referred invariably to [redacted]. Counsel laid no foundation and introduced no evidence to connect then[redacted] his letter [redacted] or her recommendation, or any party to this petition. Principally, the [redacted] ecommendation, in response to the NOID, changed her statement to aver six (6) or seven (7) years of the beneficiary's service as an employee and to delete the reference to odd jobs.

The director considered defects in jurats for certificates of translation of the [redacted] and the [redacted] recommendation. *See* footnotes 3-5. The director weighed [redacted] lear statements in the 2003 investigation against the later, confused transmittal and English translation of the [redacted] recommendation.

The director determined that statements of [redacted] in the 2003 investigation were more reliable, that the [redacted] ecommendation contained false statements designed to secure a benefit from Citizenship and Immigration Services (CIS), and that the evidence did not establish that the beneficiary had three (3) months of experience in the job offered, as required by Form ETA 750, Part A, block 14. Therefore, the director denied the petition.

The petitioner appealed, and counsel filed a brief, which attacked the 2003 investigation, as follows:

> The "alleged" Investigation, conducted by [CIS] to verify the foreign experience of [redacted] as a housekeeper, contains uncertain and undisclosed information, sufficient to doubt the reliability of the said investigation. In fact, the **conduct (whether questions were thrown rhetorically, manner (whether there was coercion), method, Spanish language fluency of the investigator and important details (e.g. questions asked, time and day of the investigation, report,)** [sic]) of the investigation were undisclosed to the petitioner. . . . What was only provided was the limited and curtailed summary statement contained in the Notice of Intent to Deny. Absence of the important details mentioned above could result to [sic] a questioning of the entire investigation.

Counsel specifies no impropriety that arose from the investigation, but expresses the belief that the elucidation of a host of details could result in a question of credibility. Similarly, the petitioner alleged the employment of the beneficiary, further, at [redacted] The investigator did not fin[redacted] a travel agency, at the location given in Form ETA 750. [redacted] recommendation denied knowledge of the beneficiary's work at [redacted] Counsel stated that [redacted] ceased operations in 1997, that the beneficiary confirmed this, and, concluded that the investigator could not find [redacted] for that reason.

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[3] The certificate of translation of the [redacted] etter did not meet requirements of 8 C.F.R. § 103.2(b)(3). *See next,* the discussion of the certificate of translation of the [redacted] recommendation. [redacted] omposed his letter a year after the notary certified the translation and, also, after the notary's commission expired. [redacted] composed the undated [redacted] ecommendation after the 2003 investigation. The notary, nonetheless, dated the certification of translation July 2, 2001, and her notary commission expired November 8, 2001. This certification does not satisfy requirements of 8 C.F.R. § 103.2(b)(3).

[5] The translation of the [redacted] ecommendation is not a full and complete. *See* 8 C.F.R. § 103.2(b)(3). It lays no foundation and presents no evidence to connect [redacted] or as the spouse of Vicente [redacted]

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The [redacted] letter and [redacted] recommendation contained confused and inaccurate translations and defective certificates of translation. Counsel admits as much and submits new translations, jurats, and certificates of translation. These different submissions on appeal do not establish the beneficiary's experience, as required by 8 C.F.R. 204.5(g)(1).

The NOID put the petitioner on notice of contradictory evidence as to the employment. Further, the NOID provided the opportunity to respond to the deficiency with evidence of qualifications of the beneficiary, as stated in Form ETA 750. *See* 8 C.F.R. § 204.5(g)(2). Like the RFE, the NOID serves the purpose to elicit further information that clarifies whether the petitioner has established eligibility for the benefit at the priority date. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Since the NOID put the petitioner on notice of a deficiency and gave the opportunity to satisfy it, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner desired the consideration of properly notarized documents, evidence of wages paid, and full-time employment, it should have submitted them in response to the NOID. *Id.* Under the circumstances, the AAO need not, and does not, weigh the sufficiency of evidence first presented on appeal.

In responding to the 2003 investigation, the petitioner did not explain the deficient jurats of the [redacted] letter. Indeed, the petitioner replicated them in th[redacted]ecommendation. Then, on appeal, the petitioner attempts to introduce entirely new translations and notarial certificates of different notaries.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

> It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

[redacted] further, stipulated that neither she [redacted] was giving an employment letter. She conceded, also, that she did not know the beneficiary's wages, since [redacted] handled that. He provided no evidence of wages paid, even on appeal. CIS cannot determine the extent of the prior experience in job offered and may not approve the petition without it.

Employment is defined as permanent, full time work. 20 C.F.R. § 656.3, *Employment*. Evidence must relate to such qualifying experience. *See* 8 C.F.R. § 204.5(g)(1).

Provisions of 20 C.F.R. § 656.21(a)(3)(iii) specify the proof for the experience set forth in the Form ETA-750, viz.:

> (A) Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of

> duties performed on the job, equipment and appliances used, and the amount of wages paid per week or month. The total paid experience must be equal to one full year's employment on a full-time basis. For example, two year's experience working half-days is the equivalent of one year's full time experience. . . .

On appeal, counsel repeats the final assertion of the [redacted] recommendation, namely, that the 2003 investigation relied on statements of persons who were not physically present to give them. The 2003 investigation, however, does not mention or rely any such person or statements. The petitioner does not indicate any particular in which [redacted] was misled or her testimony tainted.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence is consistent with statements of [redacted] in the 2003 investigation, viz., that the beneficiary, for a period of six (6) months, worked occasionally at odd jobs as a neighbor, not as an employee. No evidence of wages paid or other credible fact establishes full-time employment for three (3) months. Counsel contends that the beneficiary stands firm that her previous experience is, in fact, true and genuine, and that all the information and pieces of evidence to establish it are verifiable and legitimate. To the contrary, the 2003 investigation contradicted essential information and pieces. The self-serving assertions of the petitioner and the beneficiary have little evidentiary value.

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) states:

> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F.Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F.Supp.2d 7,

Counsel contends that CIS must approve the petition because its denial would result in hardship to the petitioner. This ground for relief does not appear in any pertinent law or regulation. In evaluating the beneficiary's qualifications, Citizenship and Immigration Services (CIS), formerly the Service or INS, must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The issue is whether the beneficiary met all of the requirements stated by the petitioner in Form ETA 750, Part A, block 14. The petitioner has not established that the beneficiary had three (3) months of experience in the job offered at the priority date. Therefore, the petitioner has not overcome this portion of the director's decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.